IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

Prahlad Rai **VS**. Industrial Tribunal & others.

S.B. CIVIL WRIT PETITION NO.6572/1992
under Article 226 of the
Constitution of India.

Date of order : 11th Dec., 2004

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. Tribhuvan Gupta for the petitioner.

Mr. B.C. Mehta for the respondents.

BY THE COURT:-

Heard learned counsel for the parties.

This petition was originally directed against the award passed by the Labour Court on 23.6.1992 and rejection of review application against thereof on 22.10.1992 by the Industrial Tribunal, Bhilwara.

The petitioner was claiming to be an employee

of Bhilwara District Milk Producer Cooperative Society whereas the said Cooperative Society denied the petitioner as its employee. The petitioner raised a dispute which was referred by the State Government to the Industrial Tribunal vide order dated 13.3.1990. The parties to dispute mentioned in the order of reference were (i) Manager, Bhilwara District Milk Producers Cooperative Union Ltd. Bhilwara which is Sub-Animal Husbandary Product Scheme through Bhilwara District Milk Producers Cooperative Union and (2) the petitioner Prahalad Rai, Lower Divisional Clerk. The learned Judge, Labour Court was of the opinion that since it is an individual dispute of the petitioner workman and the case does not fall under Section 2A of the Industrial Disputes Act, it is not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. The review against the same was dismissed on the ground that the Labour Court does not have the power to review its own order.

This has led to filing of the present writ petition.

From the proceedings, it appears that the petitioner has also earlier filed a civil suit to seek the same relief which was later on withdrawn and statement was made before issuing notice on

10.12.1992, that the suit was withdrawn because the case was referred to the Industrial Tribunal and it was not withdrawn on account of any adverse order by the Civil Court as regards the injunction.

After the show cause notice was issued the matter was ultimately admitted on 17.8.1994 in the presence of both the learned counsel for the parties. In the writ petition, the petitioner has impleaded the Industrial Tribunal, Bhilwara, Zila Dugdh Utpadak Sahakari Sangh Ltd., Rajasthan Co-Operative Dairy Federation Ltd., as parties. Apart from quashing the orders of the Industrial Tribunal, a declaration was sought that the petitioner was a permanent employee of the respondent No.2 i.e. Bhilwara Zila Dugdh Utpadak Sahkari Sangh Ltd. as having been appointed vide Annex.1 and 2 and the said respondent No.2 be directed to appropriately place the petitioner in the seniority list of its employees on the basis of the petitioner's employment vide Annex.1 and 2. Other consequential reliefs in furtherance thereof were also sought with which we are not concerned.

For the first time in 19.11.1999, when the matter was listed for hearing, a statement was made by the learned counsel for the petitioner that the respondent No.2 by order dated 18.8.1993 has absorbed

the petitioner in their service w.e.f. 16th August, 1993. The grievance of the petitioner remains that he ought to have been treated in service of Bhilwara Dugdh Utpadak Sahakari Sangh w.e.f. 29th May, 1978. For this purpose, time was sought for amending the writ petition which was allowed. It appears that any formal application for amending the writ petition was not filed. On 11.7.2000, the learned counsel for the petitioner was permitted to argue all possible legal submissions against the impugned award without amending the writ petition. Thereafter, on 24.8.2000 the petition was dismissed for want of prosecution observing that though amendment was granted but the amended copy of the writ petition was not filed so far. The restoration application having been rejected, the special appeal was preferred by the petitioner which was allowed on 23.3.2001 and the writ petition was restored. Thereafter, the amended writ petition was filed in Court on 28th March, 2001.

Shorn of the technicalities, the fact situation which appears from the record is that on 19.11.1999 the following order was passed by the learned Single Judge:-

> "Mr. Gupta wants to amend the petition. Three weeks' time is granted for the purpose."

Coupled with the order passed on 24.8.2000 which records "Amendment was granted in this petition but amended copy of petition is not filed so far" shows that the petitioner as well as the Court was under the impression that by order dated 19.11.1999 the oral request for amending the writ petition has been allowed and consequently after the writ petition was restored after it was dismissed on 24.8.2000 for not submitting amended writ petition, the petitioner has filed the amended writ petition. In these circumstances, it must be taken that the petition was allowed to be amended and amended writ petition is confined to the grievance raised as has been pointed out by the petitioner in the following paragraphs:-

> (T) That however now in view of Annexure 11 to 13 the controversy regarding the employer of the petitioner has come to an end in as much as the respondent have clearly taken the petitioner to be the employee of the respondent No.2. And since the fact of the petitioner having been appointed vide Annexure 1 & 2 is not in dispute, likewise it is also not in dispute that the petitioner's name does not find place any wherein the seniority list, the petitioner is legitimately entitled to be declare to be the employee of respondent No.2 and with effect from the orders Annexure No.1 & 2. Obviously in view of Annexure no.11 to 13 the impugned orders Annexure no.9 & 10 are also required to be accordingly quashed.

By order dated 6th August, 1993 passed by the RCDF, respondent No.3 and in pursuance of which the petitioner was absorbed and appointed vide order dated 10th August, 1993 the petitioner joined at respondent No.2 on 16.8.1993.

The order passed by the respondent No.3 clearly indicates that the services of the petitioner were transferred to the respondent No.2, Bhilwara Zila Dugdh Utpadak Sahkari Sang Ltd. for absorption and it was clarified that **the absorption will not result in disturbing continuity of service** and w.e.f. 16.8.1993, the petitioner shall be treated to be an employee of Bhilwara Zila Dugdh Utpaak Sahkari Sang Ltd. and that service of petitioner in R.C.D.F. shall stand terminated and henceforth the petitioner's services shall be governed by the conditions of service of respondent No.2. This order is dated 6.8.1993 and clearly states that his services is treated to be in respondent No.2 -Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. and the petitioner shall be the employee of the respondent No.2 w.e.f. 16.8.1993. It also clearly postulated it to be a case of absorption by Bhilwara Zila Dugdh Utpadak Sahakari Sang Ltd. without loosing benefit of continuity of service.

In furtherance of this, the respondent No.2 also passed the order dated 10.8.1993 stipulating that on the basis of option submitted by the petitioner, his name was sent to respondent No.2 for consideration and **his case was found fit for absorption** on the basic salary of Rs.1490/- in the pay scale of Rs.950-1680. It also envisaged that **his services shall be deemed to have been transferred to the Bhilwara Zila Dugdh Utpaak Sahkari Sang Ltd. w.e.f. 16.8.1993 and there will not be any break in continuity of service** and he will be entitled to the benefits of terms and conditions of rules governing the employees of the Sangh.

These three documents leave no room of doubt that the petitioner vide order dated 6.8.1993 and 10.8.1993 passed by respondent No.3 and 2 respectively stood transferred to respondent No.2 and stood absorbed w.e.f. 16.8.1993 with continuity of service. Consequently, the conclusion is irresistible that the petitioner is entitled to assignment of seniority on the basis of officiation since his first appointment in the RCDF.

Accordingly, the petition is disposed of finally with direction to respondent No.2 to assign rightful place to the petitioner in seniority on that

basis, if it has not been done already. Any dispute arising out of assignment of seniority in terms of aforesaid direction shall be subject to any objection or the remedy that may be taken by the petitioner in respect thereof.

There shall be no order as to costs.

[RAJESH BALIA], J.

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